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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

ONEWEST BANK, FSB,

Plaintiffs,

vs.

J. RANDALL FARRAR; CHRISTOPHER SALEM; WAYNE WAGNER; MARY WAGNER; LOT 48A LLC; POOL PRO, INC.; CREDIT ASSOCIATES OF MAUI, LTD; JOHN and MARY DOES 1-20; DOE PARTNERSHIPS, CORPORATIONS OR OTHER ENTITIES 1-20,

Defendants.

CIVIL NO. 12 CV 00108 ACK-KSC
(Foreclosure)

DEFENDANT CHRISTOPHER SALEM'S SEPARATE CONCISE STATEMENT OF FACTS IN SUPPORT OF ITS OPPOSITION TO PLAINTIFF ONEWEST BANK, FSB'S MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANTS J. RANDALL FARRAR, CHRISTOPHER SALEM, WAYNE WAGNER, MARY WAGNER and LOT 48A LLC, AND FOR SUMMARY JUDGMENT AND DEFAULT JUDGMENT AGAINST DEFENDANT CREDIT ASSOCIATES OF MAUI, LTD, AND FOR AN ORDER FOR INTERLOCUTORY DECREE OF FORECLOSURE AND FOR ENTRY OF FINAL JUDGMENT PURSUANT TO FED. R. CIV. P. 54(b); L.R. RULE 7.5(E) CERTIFICATE; EXHIBITS "A"- "Z

**DEFENDANT CHRISTOPHER SALEM'S SEPARATE ONCISE
STATEMENT OF FACTS IN SUPPORT OF ITS OPPOSITION TO
PLAINTIFF ONEWEST BANK, FSB'S MOTION FOR SUMMARY
JUDGMENT AGAINST DEFENDANTS J. RANDALL FARRAR,
CHRISTOPHER SALEM, WAYNE WAGNER, MARY WAGNER and LOT
48A LLC, AND FOR SUMMARY JUDGMENT AND DEFAULT
JUDGMENT AGAINST DEFENDANT CREDIT ASSOCIATES OF MAUI,
LTD, AND FOR AN ORDER FOR INTERLOCUTORY DECREE OF
FORECLOSURE AND FOR ENTRY OF FINAL JUDGMENT PURSUANT
TO FED. R. CIV. P. 54(b)**

Defendant, CHRISTOPHER SALEM (hereinafter "Defendant"), by and through his attorneys, CAIN & HERREN, ALC, hereby submits, pursuant to Rule 56.1 of the Local Rules of Practice for the United States District Court for the district of Hawaii, its Separate Concise Statement of Facts in Support of Defendant's Opposition to Plaintiff's Motion for Summary Judgment Against Defendants J. RANDALL FARRAR ("Farrar"), CHRISTOPHER SALEM ("Salem"), WAYNE WAGNER, MARY WAGER and LOT 48A LLC, and for Summary Judgment and Default Judgment Against CREDIT ASSOCIATES OF MAUI, LTD, and for an Order for Interlocutory Decree of Foreclosure and for Entry of Final Judgment Pursuant to Fed. R. Civ. P. 54(b).

Facts	Evidentiary Support
OWB mortgage is not in senior position on the Hui Road. The County of Maui holds senior position with an open ended lien that has been noticed for collection. The amount is unknown.	Salem Declaration: Exhibit "V"
The Concise Statement of Facts filed with the SJ has an 18 month gap between July 22, 2010 thru January 24, 2012.	See Concise Statement of Plaintiff

Facts	Evidentiary Support
The claim to the Court by Attorney Schiel that the borrowers have " <i>failed and neglected</i> " to the honor their loan obligations is fraudulent.	Salem Declaration: Exhibit "C"
Creditor Wagner has personally seen documentation showing OWB turned down offers for Hui Road for \$1.9 million and \$2.4 million. The evidence was presented to OWB legal counsel.	Wagner Declaration
In January of 2013, OWB Attorney Schiel subpoenaed Prudential Maui Realtors. Five Hundred pages of escrow documents, purchase contracts, and communications relating to the borrowers attempts to pay off their OWB loans were produced.	Subpoenaed Documents of Prudential Maui Realtors
When they filed SJ, OWB was concealing evidence from their former legal counsel RCO, Hawaii, LLLC, subsidiary Indy Mac Mortgage Services, agent Trustee Corps and select employee Babu Abraham.	Salem Declaration: Exhibit "A"
June 13, 2013 Subpoena from served Upon OWB Agent Trustee Corps, RCO Hawaii, LLLC, and Indy Mac.	Salem Declaration: Exhibit "B"
Within the last 30 days over 4000 pages of concealed evidence by OWB relating to the La Jolla Bank ("LJB") loan agreements have been obtained from Trustee, and RCO.	Salem Declaration: Exhibit "B"
The evidence proves the LJB Credit Memorandum referenced in SJudgment as a " <i>post funding document</i> ", is in fact an official LJB Loan Committee Underwriting document.	Salem Declaration: Exhibit "D"
For over three years, the borrowers have requested complete copies of their seized LJB loan files from OWB, the FDIC, and their legal representatives. A complaint was filed by borrower with OTS immediately after LBJ seizure by	Salem Declaration: Exhibit "X"

Facts	Evidentiary Support
LBJ Underwriting Analysis referenced primary source of loan repayment ; <i>"Sale of Hui Road - Refinance of Lower Road".</i> Signed by La Jolla Bank President / CEO on August 8, 2008 .	Salem Declaration: Exhibit "D"
The borrower's La Jolla Bank Loan Application & Business Plan. July 17, 2008 clearly stated the intent of loans. <i>"Sale of Hui Road and Pay Down of Lower Road"</i> <i>"Retain ownership of Lower Road family home"</i>	Salem Declaration: Exhibit "D"
Borrowers received contemporaneous communication from LJB officer on 9/9/08. <i>"Paying off one loan is okay and does not force a call due on the other loan."</i>	Salem Declaration: Exhibit "F"
Cross collateral mortgage for Lower Road was recorded on 9/11/08 two days after the loan payoff communication.	Salem Declaration: Exhibit "G"
Two LJB release of cross lien Memorandums were official records. Executed by VP Martin Rodriguez.	Salem Declaration: Exhibit "H"
The signed Memorandums run parallel with the written communication sent to the borrowers from LJB Loan Officers on 11/4/08 and 12/2/08. <i>"..we did not require a pay down above the balance owed on the loans"</i>	Salem Declaration: Exhibit "I"
9/17/10 Fair Debt Collection Act Notice sent from RCO. Debt for Hui Road - \$1,620,041.72	Salem Declaration: Exhibit "J"
FTC Fair Debt Collection Act defines debt as "any obligation of a consumer to pay money arising out of a transaction in the property or, property, or insurance, or service which are subject of the transaction"	Salem Declaration: Exhibit "J"
3/14/11 Notice of Rescission of Foreclosure was filed with by OWB Attorney RCO based on the open with Old Republic Title & Escrow. All Cash - Hui Road f-\$1,900,000.00	Salem Declaration: Exhibit "K"

Facts	Evidentiary Support
March 8, 2011 RCO Loan Payoff Calculation	Salem Declaration: Exhibit "K"
On March 17, 2011 Indy Rep Naidoo located in Texas rejects the \$1,900,000 all cash sale. Naidoo classified the purchase as short sale against two individual loans. Lower Road was not involved in Hui Road escrow.	Salem Declaration: Exhibit "M"
March 25, 2011 Naidoo " <i>Let me know if Junior lien holder (Wagner)</i> <i>would like to make an offer on both properties.</i> "	Salem Declaration: Exhibit "P"
3/28/11 Wagner offer to Indy representative Naidoo for the two properties. \$1,850,000.00	Salem Declaration: Exhibit "Q"
4/7/11` Prudential Maui Realtors agent offer to OWB for Hui Road - . \$2,449,000.00	Salem Declaration: Exhibit "S"
4/8/11 Communication to OWB representative Abraham. "Can you provide us something that spells out the cross collateral terms?"	Salem Declaration: Exhibit "T"
4/11/2011 OWB rep Abraham informed borrowers that signing release agreement. required before offers considered.	Salem Declaration: Exhibit "S"
4/13/11 OTS files Consent Order against OWB	Consent Order
4/18/11 Communication to OWB representation Abraham. " <i>The Pre Negotiation letter makes reference to modifying certain provisions of the loan documents. For the last 30 days I have requested a copy of the specific terms of the cross collateral agreement.</i> "	Salem Declaration: Exhibit "T"

Facts	Evidentiary Support
<p>10/14/11 VP Olinski claims that the FDIC is involved with loan resolution. FDIC has confirmed they play no role with OWB or Indy in individual loan resolutions. OWB Vice Olinski proposed to the borrowers a sale of Hui Road home and refinance of Lower Road family home.</p>	Salem Declaration: Exhibit "U"
<p>LJB release of collateral loan terms allowing sale of Hui Road and refinance of Lower Road was executed contemporaneously by the President of LJB, approved by Loan Committee, confirmed by senior executives, and official record of the bank. The agreements are directly related to Grantor's loan as clearly stated in the recorded mortgage.</p>	Salem Declaration; Exhibit "D"
<p>No side or oral agreements existed. FDIC's value or interest in the properties.</p> <p>The 1942 D'Oench Duhme Doctrine referenced in the Motion for Summary Judgment has no application.</p>	
<p>The indisputable material facts involving breach of contract by OWB, wrongful foreclosure, negligence misrepresentation by Indy, and unfair and deceptive business practices by both entities are now in evidence</p>	
<p>HRS 480 asset-based lending is among the most harmful of predatory lending practices..</p>	HRS § 480-2
<p>Federal Truth in Lending Act, the borrower's entire LJB indebtedness is subject to Reg Z § 226.32. The LJB loan agreements are unlawful.</p>	Federal Truth in Lending Act - Regulation Z §226.32
<p>Feb 2013 FDIC files a 57 million dollar lawsuit against senior executives with LJB that executed the borrower's loans. Direct parallel with borrower's complaint filed with the OTS weeks after LJB was seized.</p>	Salem Declaration: Exhibit "Y"

Facts	Evidentiary Support
9/7/12 Attorney Schiel filed Affirmation with Court stating he was aware obligations to amend his pleadings in light of newly discovered material facts.	Salem Declaration: Exhibit "Z"

DATED: Wailuku, Hawaii, August 19, 2013

CAIN & HERREN, ALC

/s/ David. W. Cain

Attorney for the Defendant Christopher Salem

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L.R. RULE 7.5(E) CERTIFICATE

L.R. RULE 7.5(E) CERTIFICATE

Pursuant to Local Rule 7.5(e) and 56.1(d), I hereby certify that Defendant Christopher Salem's Separate Concise Statement of Facts in Support of its Opposition to Plaintiff's Motion for Summary Judgment Against Defendant J. Randall Farrar, Christopher Salem, Wayne Wagner, Mary Wagner and Lot 48A LLC, and for Summary Judgment and Default Judgment Against Defendant Credit

Associates of Maui, Ltd, and for an Order for Interlocutory Decree of Foreclosure and for Entry of Final Judgment Pursuant to Fed. R. Civ. P. 54(b) is proportionately spaced, has a typeface of Times New Roman 14 points and contains 1478 words, exclusive of exhibits, declarations and certificate of service. I calculated this figure using the word count tool of the word processing system used to produce the document.

DATED: Wailuku, Maui, Hawaii, August 19, 2013.

CAIN & HERREN, ALC

/s/ David. W. Cain

Attorney for the Defendant Christopher Salem